

Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

First Appeal No. 869 of 2001
Old F.A. No. 250 of 1982

The Collector, Dehradun

.....Appellant.

Versus

Sri Jai Hari Har Lal S/O Sri Shiv Darshani Lal,
R/O Mukand Bhawan, Tilak Road, Dehradun.

.....Respondent.

Sri U.P.S. Negi, Learned Additional Advocate General for the appellant.
None appeared for respondent despite service.

Dated August 31, 2006
P.C.:Hon. B.S. Verma, J.

This appeals arise out of the judgment and award dated 31-7-1981, passed by the then District Judge, Dehradun (***in short the Judge***) in Land Acquisition Reference Case No. 12 of 1980, Jai Hari Har Lal vs. Collector, Dehradun, whereby the learned Judge has decided five references, under Section 18 of the Land Acquisition Act (***for short the Act***) namely, L.A. Case Nos. 11 of 1980, 12 of 1980 (***present case***), 13 of 1980, 14 of 1980 and 15 of 1980 by a common judgment and the Reference Court enhanced the compensation from Rs. 2,35,747.32 to Rs. 3,28,900/- with interest @ 6% per annum from 7.5.1977. It was further directed by the Reference Court that in the amount awarded, the parties shall get the amount in proportion of their share specified in the body of the judgment with proportionate costs.

It may be mentioned that the State/Collector Dehradun preferred an appeal (F.A. No. 899 of 2001) Collector Vs. Bhav Harihar Lal, against the said award passed by the District Judge relating to L.A. Case No. 15 of 1980, which has been decided by this Court on 27-2-2006 thereby the appeal preferred by the Collector Dehradun was dismissed on merit. Subsequently, this Court vide order dated 22-04-2006 decided two appeals namely F.A. No. 982 of

2001, Collector Dehradun Vs. Prem Hari Har Lal and F.A. No. 548 of 2001, Collector Dehradun Vs. Surendra Kumar in terms of the earlier judgment dated 27-2-2006 and dismissed these two appeals which had arisen out of Reference No. 11 of 1980 and Land Acquisition Reference No. 14 of 1980.

Brief fact relevant for disposal of this appeal are that land measuring 4.237 acres situated in village Kanwali, District Dehradun was acquired for construction of houses, which comprises of Khasra Nos. 66, 67, 68 69 and 70. Notification under Section 4 of the Act was issued on 11.12.1976 followed by Notification under Section 6 published on 29-1-1977. Possession over the acquired land was taken on 7.5.1977. Ultimately, the Special Land Acquisition Office (**S.L.A.O.**) determined the market value of the land @ Rs. 72,860/- per acre and deducted 25% towards largeness of area as well as deduction @ 15% was also made towards depreciation in the land. **SLAO** also awarded solatium @ 15% and interest from 7.5.1977 to 5.8.1978. Accordingly total compensation of Rs. 2,35,747.32 to be paid to the land owners.

Aggrieved by the award passed by the **S.L.A.O.**, application under Section 18 of the Act was preferred before the Collector, which was referred to the District Judge for adjudication of the proper market value.

It was alleged by the claimants that the S.L.A.O. has not assessed the market value of the acquired land correctly and the award passed by him is adequate. The State filed written statement before the Reference Court and stated that the S.L.A.O. has considered all relevant exemplars before determining the market value of the property under acquisition. It was also pleaded that the acquired land was not levelled and State was bound to bear costs towards development of land and that the entire land was not fit for purposes of residences.

Learned District Judge framed necessary issues in the case and after considering the evidence led by the parties, the Reference Court came to the conclusion that the land acquired is within the municipal limits of Dehradun and it adjoins residential localities including the posh locality of Yamuna Colony inhabited by high class Engineers. It was also held that the land was suitable for building residences. The Reference Court was of the view that though the entire acquired land was not levelled throughout, the it required leveling at some place for which huge investment was not required. It was also held that the allegation of the State that there is a flow of river through this and was not correct and that the total land in question cannot be said to have lost its utility for the purposes of building purposes. Ultimately, the District Judge held the landowners entitled to get Rs. 3,28,900/- with interest @ 6% per annum from 7.5.1977 less the amount of award in proportion to their shares specified in the judgment. They were also held entitled to proportionate costs on the amount exceeding the amount of award vide his award dated 31-7-1981 as mentioned earlier.

In this appeal, it has been contended that the judgment and award passed by the Reference Court suffers from infirmities and the market value assessed by the reference court is not based on proper appraisal of evidence on the point.

In the course of arguments, it has been fairly conceded by the learned Additional Advocate General appearing for the State-appellant that this Court has already decided the controversy involved in this case while deciding First Appeal No. 899 for 2001, which had arisen from the same award of the S.L.A.O. and was preferred against the same judgment and award of the Reference Court dated 31-7-1981. It has also been conceded that the facts of the instant appeals are squarely covered by the decision of this Court dated 27-2-2006.

I have gone through the judgment dated 27.2.2006 passed in Appeal No. 899 of 2001, Collector Dehradun Vs. Bhav Harihar Lal. Moreover, this Court vide order dated 22-4-2006 has already decided two appeals in terms of the said order dated 27.2.2006. At the moment, there is nothing to be held otherwise in the present appeal. The District Judge has also observed that all the claimants of the five references belonged to the same family. The land acquired is the same. It I admitted that the land was acquired under the same Notification and for the same purpose. This Court while deciding F.A. No.899 for 2001 arising out of Land Acquisition Reference No. 15 of 1980 decided by the District Judge by common judgment has already considered all the aspect of the controversy involved in the present appeal. Having considered the facts and circumstances of the case, I find myself in full agreement with the view taken by this Court while deciding appeals earlier thereby all the three appeals have been dismissed on merit. It will be in the fitness of things to dismiss the present appeal on merit in terms of judgment of this Court passed in F.A. No. 899 for 2001 Collector Dehradun Vs. Bhav Harihar Lal.

Accordingly the present appeal is dismissed on merit in view of the judgment passed in F.A. No. 899 for 2001, Collector Dehradun Vs. Bhav Harihar Lal, dated 27-2-2006. No order as to costs.

(B.S. Verma, J.)

RCP